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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

In the Matter of)

Request for Review of the Decision of the)
Universal Service Administrator by)

San Diego Unified School District)

Schools and Libraries Universal Support)
Mechanism)

File No. SLD-339004

CC Docket No. 02-116

 ORIGINAL

To: The Commission

**SUPPLEMENT TO
REQUEST FOR REVIEW OF THE DECISION
OF THE UNIVERSAL SERVICE ADMINISTRATOR,
OR IN THE ALTERNATIVE, REQUEST FOR WAIVER
BY THE SAN DIEGO UNIFIED SCHOOL DISTRICT**

The San Diego Unified School District ("District"), by its counsel, hereby supplements its pending Request for Review¹ of the Decision by the Universal Service Administrator, Schools and Libraries Division ("SLD") denying the District's request for funding for internal connections products and services for Funding Year 2003 ("SLD Decision").²

Introduction

The purpose of this Supplement is to submit for inclusion in the record important information that became available after the District filed its Request for Review. This information – the conclusions of an audit conducted by the Internal Audit Division

¹ Request for Review of the Decision of the Universal Service Administrator or in the Alternative, Request for Waiver of the San Diego Unified School District, submitted Feb. 18, 2005 ("Request for Review").

² Administrator's Decision on Appeal – Funding Year 2003-2004 (Dec. 20, 2004).

("IAD") of the Universal Service Administrative Company ("USAC")³ – demonstrates that the District selected "the most cost-effective service offering" for the subject funding request, in complete satisfaction of the requirements of Section 54.511(a) of the Commission's Rules.⁴ In addition, a recent decision involving circumstances strikingly similar to those that are the subject of the Request for Review, the Wireline Competition Bureau ("Bureau") reversed an SLD decision on grounds that factors other than price "may form a reasonable basis on which to evaluate whether an offering is cost-effective."⁵ In considering the USAC Audit and *Wyoming* together with the Request for Review, there can be no remaining doubt that the *SLD Decision* was erroneous and should be overturned.

Discussion

Contrary to the facts and legal precedent, the *SLD Decision* found that "price was not the primary factor" when the District selected providers, and denied the District's funding request. On December 2, 2005, several months following the filing of the Request for Review, the IAD reported on its audit of the District's compliance with Commission rules and USAC implementing procedures for Funding Year 2002. The USAC Audit generally concluded that the "District is compliant, in all material respects, with the FCC Rules and USAC implementing procedures for the period reviewed. . . .

³ See Memorandum from Mel Blackwell, Acting Vice President, Schools and Libraries Division, to Wayne Scott, vice President, Internal Audit Division, Independent Auditors' Report on San Diego Unified School District's Compliance with the FCC Rules and the USAC Implementing Procedures – USAC Audit No. SL2005BE090, dated Dec. 2, 2005 ("USAC Audit") (copy attached as Exhibit 1 hereto). As noted therein, the USAC Audit is a matter of public record. See USAC Audit, p.10.

⁴ Section 54.511(a).

⁵ *Wyoming Department of Education*, DA 06-1509, rel. July 25, 2006 ("*Wyoming Order*"), at 5.

Based on these results, we noted no improper payments.”⁶ With respect to the District’s compliance with the competitive bidding process, the USAC Audit stated as follows:

IAD obtained an understanding of the School’s competitive bidding (service provider selection) process to determine its adequacy and whether the process has been established to select the most cost effective provider. No exceptions were noted.⁷

Thus, according to USAC’s own audit, the District fully complied with FCC rules or USAC procedures, including the competitive bidding process and the selection of the most cost-effective provider.

These findings strongly support grant of the District’s Request for Review. As explained in the Declaration of Evan Leslie, Facilities Development Project Coordinator for the District’s technology modernization program, the District followed the same competitive bidding process for Funding Year 2003 that it followed for Funding Year 2002.⁸ According to Mr. Leslie, the process “allowed the District to include factors such as pricing, technical ability, past performance and references.”⁹ Yet despite the fact that the USAC Audit found the Funding Year 2002 bidding process to be fully compliant and resulting in the selection of the “most cost effective” providers, the SLD came to a completely opposite finding for Funding Year 2003. This obvious inconsistency cannot stand.

It also would be inconsistent for the Commission to grant the requests for review in the *Wyoming Order* but let stand the *SLD Decision*. In the *Wyoming Order*, the state Department of Education issued a request for proposals that gave higher priority to

⁶ USAC Audit, p.2. See, e.g., *Henkels & McCoy, Inc.*, DA 06-1463, rel. July 19, 2006 (“*Henkels*”) (summarizing purpose of audits and authority of USAC to recover program funds upon finding of improper use of funds or of waste, fraud or abuse); *Richmond County School District*, DA 06-1265, rel. June 13, 2006 (“*Richmond County*”) (same).

⁷ *Id.*, p.6 (emphasis added).

⁸ The Declaration of Evan Leslie (“*Leslie Declaration*”) is attached as Exhibit 2 hereto.

⁹ *Leslie Declaration*, p.1. See also Request for Review, p.12.

“functionality” than price, consistent with the objectives of the department and state procurement law.¹⁰ Citing the Commission’s *Universal Service Order*¹¹ and its

*Tennessee Order*¹² – upon which the District relies¹³ – the Bureau stated that:

Although the Commission determined that price should be the primary factor in selecting a bid, applicants are given maximum flexibility to take service quality into account and may choose the offering that meets their needs most effectively and efficiently. In this regard, the Commission concluded that *other factors, such as prior experience, personnel qualifications, and management capability, may form a reasonable basis on which to evaluate whether an offering is cost-effective.*¹⁴

Applying this standard to the specific case, the Bureau found that, even though price was not “*the* primary factor,”

Wyoming’s procurement process required selection of the most cost-effective bid after examining price as *a* primary factor. . . . The underlying record shows that Qwest’s proposal satisfied the objectives set forth in Wyoming’s RFP; it not only received the highest number of points in the bid evaluation, but it also represented the lowest cost of the proposals submitted.¹⁵

As the District made clear in its Request for Review, price was the primary factoring its selection of providers for Funding Year 2003, representing at least 40 percent of the evaluation.¹⁶ When the *Wyoming* holding is applied to the District’s competitive bidding process for Funding Year 2003, it is even clearer that the District considered “other factors, such as prior experience, personnel qualifications, and management capability,”

¹⁰ See *Wyoming Order*, p.4.

¹¹ Federal-State Joint Board on Universal Service, *Report and Order*, 12 FCC Rcd 8776 (1997) (“*Universal Service Order*”), as corrected by Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Errata*, FCC 97-157 (rel. June 4, 1997), *affirmed in part*, *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service Order* in part and reversing and remanding on unrelated grounds), *cert. denied*, *Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied*, *AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed*, *GTE Service Corp. v. FCC*, 121 S. Ct. 423 (Nov. 2, 2000).

¹² *In the Matter of Request for Review by the Department of Education of the State of Tennessee of the Decision of the Universal Service Administrator*, 14 FCC Rcd 13734 (1999) (“*Tennessee Order*”).

¹³ See Request for Review, pp.14-16 & n.26.

¹⁴ *Wyoming Order*, p.5 (footnotes omitted) (emphasis added).

¹⁵ *Id.* (emphasis added)

¹⁶ See Request for Review, p.12.

and that those additional factors formed a reasonable basis on which the District evaluated whether each vendor's proposal was cost-effective.¹⁷ The record clearly establishes that District's competitive bidding process meets the standards articulated in the *Universal Service Order* and the *Tennessee Order*, as recently followed in the *Wyoming Order*.

Finally, the District emphasizes that neither the SLD nor IAD found any evidence of "exceptions" or "improper payments" in the USAC Audit. This not only demonstrates that the District has a track record of compliance with Commission rules, it further illustrates that the District was not engaged in waste, fraud or abuse of the program funds. In recent months, the Commission has granted numerous requests for review upon a finding that there was no waste, fraud or abuse.¹⁸ Consistent with this precedent and IAD's own findings here, the Commission should grant the District's Request for Review.

¹⁷ *Wyoming Order*, p.5 (footnotes omitted).

¹⁸ See, e.g., *Henkels*; *supra*; *Utica City School District*, DA 06-1574, rel. Aug. 2, 2006; *Hickory Public Schools District*, DA 06-1575, rel. Aug. 2, 2006; *Jennings County Schools*, DA 06-1462, rel. July 19, 2006; *Richmond County*, *supra*; *Hickory City School District*, DA 06-1287, rel. June 16, 2006; *Anson County School District*, DA 06-1266, rel. June 13, 2006; *Bishop Perry Middle School*, FCC 06-54, rel. May 19, 2006; and *Academy of Careers and Technologies*, FCC 06-55, rel. May 19, 2006.

Conclusion

In view of the foregoing, the District respectfully requests grant of its pending Request for Review, as supplemented hereby.

Respectfully submitted,

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August 3, 2006

Attorneys for
San Diego Unified School District

Exhibit 1



Universal Service Administrative Company

To: Mr. Mel Blackwell, Acting Vice President, Schools and Libraries Division
From: Wayne Scott, Vice President, Internal Audit Division
Date: December 2, 2005
Re: Independent Auditors' Report on San Diego City Unified School District's Compliance with the FCC rules and USAC Implementing Procedures – **USAC Audit No. SL2005BE090**

Introduction

The Internal Audit Division (IAD) of the Universal Service Administrative Company has audited the compliance of San Diego City Unified School District (SDCUSD or the Beneficiary) with the FCC rules and USAC implementing procedures that are applicable to the Schools and Libraries Support Mechanism for the Funding Year 2002 (collectively, "the Rules"). Compliance with the Rules is the responsibility of SDCUSD's Management. IAD's responsibility is to express an opinion on SDCUSD's compliance based on our audit.

Purpose and Scope

Wayne Scott, Vice President of Internal Audit, Leslie Bellavia, Manager of Internal Audit, Kristin Murphy, Senior Internal Auditor, and Chris Lenhardt, Senior Internal Auditor – Fraud Specialist, conducted the audit in accordance with Government Auditing Standards issued by the Comptroller General of the United States (2003 Revision). Our audit included examining, on a test basis, evidence supporting the data used and performing such other procedures as we considered necessary to form an opinion. We believe that our examination provides a reasonable basis for our opinion.

Our audit period was the Funding Year 2002, which covers July 1, 2002 through June 30, 2003. We based our examination on the Rules in effect during that time period.

SDCUSD (BEN 143662) is located in San Diego, CA. The school district consists of 202 schools and serves approximately 134,000 students. SDCUSD received the following commitments and funding for the audit period:

| <u>Service Type</u> | <u>Amount Committed</u> | <u>Amount Disbursed</u> |
|----------------------|-------------------------|-------------------------|
| Internal Connections | \$4,810,695 | \$3,160,934 |
| Internet Access | 18,360 | 18,360 |
| Telecommunications | <u>2,016,499</u> | <u>1,412,037</u> |
| TOTALS: | \$6,845,554 | \$4,591,331 |

The committed total represents two Form 471 applications with fourteen funding request numbers (FRN). We selected the five funding requests, representing 99 percent of the disbursed amount, to perform the procedures enumerated below with respect to **Funding Year 2002 applications submitted by San Diego City Unified School District**. These procedures were performed for the purposes of 1) determining whether SDCUSD complied with the Rules, and 2) assessing any improper payment made to SDCUSD.

For purposes of this report, an audit finding is a condition that shows evidence of non-compliance with the requirements of the FCC Rules and USAC Implementing procedures. An other matter is a condition that, in our opinion, does not constitute a violation of rules and program guidelines, but needs the SDCUSD's and USAC Management's attention.

Conclusion

In our opinion, San Diego City Unified School District is compliant, in all material respects, with the FCC Rules and USAC implementing procedures for the period reviewed. Our examination disclosed two findings and three other matters. Based on these results, we noted no improper payments. A summary of our audit procedures, findings (including other matters), and responses to the findings.(including other matters) are included below.

Financial Effects of Exceptions Noted

| Report Section | Finding/Other Matter | \$ Amount |
|----------------|----------------------|-----------|
| A. | Other Matter | \$ - |
| B. | Finding | \$ - |
| B. | Finding | \$ - |
| D. 3. | Other Matter | \$ - |
| E. 1. | Other Matter | \$ - |
| Net Effect | | \$ - |

Audit Procedures, Findings, Other Matters and Responses

A. Understanding the Business

IAD spoke with the Director of IT of SDCUSD to gain a detailed understanding of the processes related to the administration of the Schools and Libraries Support Mechanism. We discussed the results of any communications with the Schools and Libraries Division (SLD) regarding the application process and any differences between the applications submitted and approved. This discussion included the process for creating and validating the technology plan, completing the application forms, the application structure, the controls over the expenditure of approved funds, and the procedures established to monitor claims submitted to the SLD via the Service Provider Invoice Form (SPI Form 474).

FCC rule 47 C.F.R. 54.505(a)(1) states that "[f]or schools and school districts, the level of poverty shall be measured by the percentage of their student enrollment that is eligible for a free or reduced price lunch under the national school lunch program or a federally-approved alternative mechanism. We obtained documentation to support the discount percentages reflected on SDCUSD's FCC Forms 471 for Telecom Services, Internet Access and Internal

Connections for Funding Year 2002. Upon recalculation of the discounts based on the documentation, we noted discrepancies of the shared discount percentages for FCC Form 471 number 290737, which contained the Internal Connections FRNs. We determined the discrepancies were caused by the beneficiary using National School Lunch Program (NSLP) numbers collected on different dates. The discount percentages for the Telecom and Internet Access Form 471 were calculated by the Beneficiary using October 2001 NSLP numbers, while the discount percentages for the Internal Connections 471 were calculated using Department of Education Data Quest numbers for the 2000-2001 school year. For our recalculation of the Internal Connections entity and shared discount percentages, we used the October 2001 NSLP data that was used to prepare the Telecom and Internet Access Form 471.

Per the Beneficiary, the two Form 471s were submitted by different groups using the data that was most current to them at that time. It is IAD's opinion that applicants should use the same data to calculate discounts on all applications for Schools and Libraries funding. IAD determined that if SDCUSD had used the October 2001 data as used to prepare the Telecom and Internet Access Form 471, it would have qualified for a shared discount of 86 percent for FRN 815553, 4 percent less than what was submitted on the SDCUSD Funding Year 2002 Form 471 application for Internal Connections. IAD has deemed this an other matter and notes that there is no monetary impact.

Recommendation:

The Beneficiary should use the NSLP data as of October 1st prior to the filing of the Form 471 for all applications if that information is made available to them before the close of the 471 filing window.

Beneficiary Response:

It was (and is) our understanding that Catriona Ayre of USAC was to make KPMG, and presumably USAC Internal Auditors, aware of the ambiguity of the rules during previous funding years as they relate to using various numbers to determine discount levels. We respectfully request that USAC Internal Auditors follow up with Ms. Ayre to verify this information before proceeding with a noted exception.

USAC Management Response:

There is no monetary impact from this finding. Instructions for the FCC Form 471, Item 9a, Column 5, inform the applicant to "Provide the number of students eligible for NSLP as of the October 1st prior to the filing of this form, or use the most current figure available." The applicant followed the FCC Form 471 instructions.

USAC provides guidance on the website under "Schools and Libraries", "Schools and Libraries Applicants", "Step 5, Calculate Discount Level". This area addresses the various discount calculation issues. In addition, should the applicant have questions that are not addressed on the website, it can contact the Client Services Bureau at 1-888-203-8100.

B. Technology Plan

We obtained and reviewed SDCUSD's 2002 Technology Plan for adequacy. We verified

that it established clear goals and strategies (including professional development) for using information technology to improve education. We noted no exceptions. We also verified that the technology plan was certified by the California Department of Education, a SLD certified technology plan approver. We noted no exceptions.

In Funding Year 2002, SDCUSD submitted one FCC Form 471 requesting funding for Internal Connections and one FCC Form 471 requesting funding for Internet Access and Telecom Services. IAD noted that SDCUSD's Internet Acceptable Use Policy does not address the safety and security of minors when using chat rooms and other forms of direct electronic communications as required by the Children's Internet Protection Act (CIPA). IAD also noted that SDCUSD did not provide reasonable public notice nor hold a public hearing to address the proposed policy.

FCC Rule 47 C.F.R. 54.520(c)(1)(i)(A) states that applicants must have an Internet Safety Policy that addresses five issues, including the safety and security of minors when using electronic mail, chat rooms, and other forms of direct electronic communications. FCC rule 47 U.S.C. sec. 254(h)(5)(A)(iii) states "[a]n elementary or secondary school...shall provide reasonable public notice and hold at least one public hearing or meeting to address the proposed Internet safety policy." We determined that SDCUSD was not aware of the requirements of CIPA. Furthermore, SLD's implementing procedures require applicants to provide reasonable public notice and hold at least one public hearing to address a proposed Technology Protection Measure and Internet Safety Policy. IAD noted a finding. However, SLD is currently seeking FCC guidance on the effect of non-compliance with CIPA. Therefore, the effect can not be determined.

Recommendation:

SDCUSD should gain a better understanding of the CIPA requirements to ensure that it is in compliance. For example, the USAC SLD website contains a reference area specific to undertaking action for CIPA.

Beneficiary Response:

The District does have an acceptable use policy for students as well as staff and has taken action to ensure that the actual Board Approved CIPA policy is brought compliant in the absence of the original documentation that was on record at the time of actual implementation of the policy.

USAC Management Response:

SLD agrees with Internal Audit's recommendation.

The following FCC rules relate to the CIPA requirements: (1) C.F.R. § 54.520(c) requires the applicable billed entity to "certify on the FCC Form 486 that an Internet safety policy is being enforced" as explained in that subsection; (2) 47 C.F.R. § 54.520(d) provides that if the applicable billed entity knowingly fails to provide the CIPA certifications, then the applicant is not eligible for the discount until eligibility is reestablished; and (3) 47 C.F.R. § 54.520 (e) provides that if the applicable billed entity does not comply with the CIPA certifications, the applicant must reimburse any funds and/or discounts it received.

In the Fifth Report and Order, the FCC stated that "recovery may not be appropriate for violation of all rules regardless of the reason for their codification."¹ The FCC went on to identify program rule violations that warrant the recovery of funds. The program rules relating to the CIPA requirements were not identified as program rule violations that warrant recovery; nor were they identified as program rule violations that do not warrant recovery. USAC has sought guidance from the FCC regarding whether or not violations of program rules relating to the CIPA requirements warrant the recovery of funds. Until further guidance is received from the FCC, USAC is unable to determine if violations of the CIPA requirements warrant recovery of funds.

FCC Rule 47 C.F.R. § 54.504(b)(2)(v) states that applicants must have all of the necessary funding to pay for their non-discounted portion budgeted and approved at the time the FCC Form 470 is filed. We inspected SDCUSD's budget for 2002-2003 and verified that it had sufficient funds available to pay its non-discounted portion of the services and equipment obtained through the program and the acquisition of other equipment and services required to make effective use of Schools and Libraries discounts. However, we could not determine that SDCUSD's budget was approved before the submission of the establishing FCC Form 470 for Funding Year 2002. SDCUSD was unable to provide evidence that the budget was approved prior the submission of the FCC Form 470. This is considered a finding with no monetary impact, since all non-discounted costs were budgeted for by the beneficiary.

Recommendation:

We have no recommendation for this finding, and note that this budget approval requirement is no longer included in the FCC's rules.

Beneficiary Response:

We respectfully agree with USAC Internal Auditors and stipulate as well that the FCC has recognized this deficiency as part of their rules.

USAC Management Response:

SLD agrees that there is no monetary impact for this finding.

In two places of the application process, the applicant is required to certify to certain information with respect to securing access to the resources necessary to use the services for which discounts are being sought. First, in Item 23 of the FCC Form 470 the applicant acknowledges that it is required to have "...all of the resources, including computers, training, software, internal connections, maintenance, and the electrical capacity necessary to use the services purchased effectively." The applicant also certifies "...that some of the aforementioned resources are not eligible for support." Second, in Item 25 of the FCC Form 471, the applicant certifies that it has "secured access, separately or through this program, to all of the resources, including computers, training, software, internal connections, maintenance, and electrical capacity, necessary to use the services purchased effectively.... [It] certifies that the Billed Entity will pay the non-discount portion of the cost of the goods and services to the service provider."

¹ See Fifth Report and Order at para. 19.

Funding Year 2002 program rules required that the applicant have the required resources when it filed its FCC Form 470. On August 13, 2004, the FCC changed the rules and modified this requirement in the Fifth Report and Order². The new FCC rule § 54.504(b)(2)(vi) states that “[s]upport under this support mechanism is conditional upon the school(s) and library(ies) securing access to all of the resources, including computers, training, software, maintenance, internal connections, and electrical connections necessary to use the services purchased effectively.” Schools and libraries, therefore, are no longer required to have secured access to the necessary resources at the time they file the FCC Form 470.

C. Competitive Bid Process

IAD obtained an understanding of the School’s competitive bidding (service provider selection) process to determine its adequacy and whether the process has been established to select the most cost effective service provider. No exceptions were noted.

D. Supported Payments

We compared the service provider bills sent to the School with the SPI Forms 474 and performed the following:

1. We reviewed the SPI Forms for accuracy and completeness. No exceptions were noted.
2. We examined the BEAR Forms for the service provider’s authorization. This step was deemed not applicable because all invoices were submitted via SPI Forms.
3. We verified that the equipment and services that support the amounts claimed on the SPI Forms were consistent with the service provider bills sent to the District, the terms and specification of the vendor contracts and the Item 21 attachment to Form 471.

IAD was unable to reconcile two selected SPI Forms submitted by SBC to the monthly bills received by SDCUSD and verify the amounts invoiced to SLD did not exceed the total cost of the eligible telecom products and services delivered for FRN 878996. USAC guidance and common business practice support that documentation should exist to support each bill to the Beneficiary; and per FCC Form 474 (SPI Form), the service provider should bill the Beneficiary only for the non-discounted portion of goods and services received.

We noted the bills included charges that varied from month to month and were unable to identify Schools and Libraries-related charges and reconcile the bills to the SPI Forms. We inquired of the Beneficiary to determine how the charges from the SPI Forms and the bills were reconciled. Per the Beneficiary, the billing process related to these SBC invoices is complex and not well understood. Therefore, the Beneficiary was not able to reconcile its monthly telephone bills to the amounts submitted for reimbursement on the SPI Forms by SBC.

² See Fifth Report and Order at para. 66.

IAD contacted SBC and were provided with spreadsheets detailing the charges for the May and June 2003 bills that were invoiced to USAC on the two selected SPI Forms. We were able to agree the sum of each spreadsheet to the SPI Forms, but were unable to *determine how SBC arrived at the totals for each Billed Telephone Number (BTN) on the spreadsheets.* We requested that SBC further breakdown the billing and selected four BTNs at random. SBC provided us with the requested information, but we were still unable to agree the entire invoiced amount to the bills received by SDCUSD.

IAD then requested that SBC provide a detailed breakdown of a selected monthly bill so that we could verify 100 percent of the invoiced amounts to the applicant bills. SBC provided the requested information, but due to the enormous volume of the data and that information previously provided by SBC gave us no indication that SLD was not invoiced correctly, IAD determined that the benefit to perform a 100 percent reconciliation of the selected bill would not outweigh its cost. IAD notes this as an other matter with no monetary impact.

Recommendation:

SDCUSD should implement proper reconciliation and monitoring procedures to account for billed costs for E-rate goods and services. These procedures should include a review, reconciliation, and accounting of billed costs to USAC and the beneficiary. This monitoring process should ensure that total billed costs are less than or equal to the total cost of the eligible services authorized under the FRNs. Documentation should be maintained to support the reconciliation and monitoring of Schools and Libraries-related costs.

We also recommend that SDCUSD discuss this matter with its service providers and that the service providers follow the applicable instructions on the FCC Form 474. In particular, SBC handles many Schools and Libraries accounts and has an E-rate department where the contact can help the beneficiary understand the process and the application of credits.

Furthermore, we recommend that SBC work with its Schools and Libraries beneficiaries to develop a process whereby the applicants are able to reconcile their monthly bills to the amounts that SBC seeks for reimbursement from SLD.

Beneficiary Response:

During our phone interview with Chris and Kristin, it was noted that due to the ineffective and overly complicated billing process that is in place with SBC through the State Contract CALNET, there is an absolute inability of any recipient of service to effectively and accurately reconcile the amount of credits and/or discounts that are posted to the bills. SBC in California has an additional administrative requirement imposed by the California Public Utilities Commission that mandates that the State discount that is allowable is adjusted to reflect a post E-Rate amount. This process essentially brings the entire process to a halt and does not allow for many beneficiaries to receive monthly discounts on the eligible costs. San Diego City Schools is one of the 3 largest eligible entities in California with several thousand eligible BTNs and WTNs and

this fact simply magnifies the complexity and does not allow for effective and efficient processing of allowable, eligible E-Rate discounts. San Diego City Schools respectfully has issue with this exception as the burden is truly on the service provider to allow for effective and accurate reconciliation of each customer's account.

Service Provider Response:

SBC has declined to comment to this other matter.

USAC Management Response:

SLD agrees with Internal Audit's recommendations.

Pursuant to the Fifth Report and Order³, 47 C.F.R. § 54.516 was amended to require both applicants and service providers to retain all records related to the application for, receipt and delivery of discounted services for a period of five years after the last day of service delivered for a particular Funding Year. In addition, on the FCC Form 473, Service Provider Annual Certification Form, the service provider certifies in Block 2, "11) The Service Provider Invoice Forms that are submitted by this service provider are based on bills or invoices issued by the service provider to the service provider's customers on behalf of schools, libraries, and consortia of those entities as deemed eligible for universal service support by the fund administrator, and exclude any charges previously invoiced to the fund administrator for which the fund administrator has not yet issued a reimbursement decision. 12) This service provider makes available to customers, upon their request, separate prices for distinct services to assist Billed Entity Applicants in identifying the portions of their bills that represent the costs of services provided to eligible entities for eligible purposes. 13) I acknowledge the Fund Administrator's authority to request additional supporting information as may be necessary. I recognize that I may be audited pursuant to this form and will retain for three years any and all records that I rely upon to complete this form and each Service Provider Invoice Form that is submitted by this service provider during the present funding year."

4. We traced the SPI Forms to the corresponding service provider invoices. See procedure number 3 above.
5. We recalculated the discounted amount reflected on the SPI Forms using the approved discount percentage noted on the FCDL. No exceptions were noted.
6. We ensured that the total amount disbursed via the SPI Forms agreed to the disbursement data maintained by SLD and that the amounts did not exceed the total amount committed per the FCDL. No exceptions were noted.
7. We examined the Beneficiary's disbursement records to verify that the Beneficiary paid its non-discounted portion for services as required. No exceptions were noted.

³ Fifth Report and Order, para 47

E. Physical Inspection

We visited a sample of schools and performed the following:

1. We physically verified that the equipment funded by the Schools and Libraries program exists in the locations noted on the applications. While we were able to physically verify the existence of the equipment, SDCUSD has not been able to provide evidence of a fixed asset physical inventory since February 2003, the date the district received an audit finding from its external auditors regarding the lack of a physical inventory performed on a regular basis. SDCUSD has not performed a physical inventory on an annual basis, the results of which should be reconciled with the amounts recorded and reported by the district. Beneficiaries of the Schools and Libraries program should ensure that E-rate funded equipment is appropriately safeguarded and maintained at the sites for which funds were requested.

We inquired of SDCUSD whether a physical inventory of fixed assets was performed since the issuance of the February 2003 audit finding and requested copies of evidence, or the results, of such inventories. In addition, we reviewed the Beneficiary's "Inventory Control" administrative procedure No. 5340 (c)(3) and noted the policy requires a physical inventory be performed every two years. We were not provided any evidence of any physical inventories performed since 2003 and per the "Material Control" group, they do not have the number of personnel required to perform physical inventories of all of the computer assets in the district on a regular basis. By not maintaining a current fixed asset listing, SDCUSD is not able to track the status of equipment, i.e., equipment that may be stolen, out for repair, moved or retired. This is considered an other matter with no monetary effect to SDCUSD.

Recommendation:

We recommend SDCUSD adhere to the district's Inventory Control Administrative Procedures and perform a physical inventory at each school at least every two years.

Beneficiary Response:

The District has implemented a district wide IT inventory control system that will track all internal equipment (eligible as well as non-eligible) on a IP address and will be able to pinpoint the location of each unit whether it has been moved from its original location or not. The task that was put before the District as a result of the single audit was insurmountable given the staffing levels – therefore, this new IT inventory control system will allow for better control and record.

USAC Management Response:

SLD agrees with Internal Audit's recommendation that SDCUSD adhere to its Inventory Control Administrative Procedures and perform a physical inventory at each school at least every two years.

In Funding Year 2002, Schools and Libraries program rules did not require applicants to maintain an asset or inventory list. Pursuant to the Fifth Report and Order⁴, 47 C.F.R. §

⁴ Fifth report and Order, para 47

54.516 was amended to require both applicants and service providers to retain all records related to the application for, receipt and delivery of discounted services for a period of five years after the last day of service delivered for a particular Funding Year. Additionally, beneficiaries must retain asset and inventory records of equipment purchased and components of supported internal connections services sufficient to verify the location of such equipment.

2. We observed the equipment used to ensure it is used for educational purposes in accordance with SLD program guidelines. No exceptions were noted.
3. We verified that the equipment purchased with Schools and Libraries funds were subjected to the same physical and internal controls that are required for the safeguarding of the Beneficiary's other assets. No exceptions were noted.

This concludes the result of the audit. This report is intended solely for the use of USAC and the FCC and should not be used by those who have not agreed to the procedures and taken responsibility for the sufficiency of those procedures for their purposes. However, this report is a matter of public record and its distribution is not limited.

cc: Lisa Zaina, USAC Chief Executive Officer
Scott Barash, USAC Vice President and General Counsel

Exhibit 2

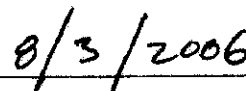
DECLARATION OF EVAN LESLIE

My name is Evan Leslie. I am making this Declaration in support of a Supplement to a Request for Review filed by the San Diego Unified School District ("District"). *I hereby declare under penalty of perjury that the statements set forth below are true and correct to the best of my knowledge, information and belief.*

1. I am a Licensed Professional Engineer in the states of New York and Connecticut and a Registered Civil Engineer in the states of Arizona and California. I have been involved in building educational facilities for 22 years and am currently employed by the District as a Facilities Development Project Coordinator.
2. On November 3, 1998, voters in the city of San Diego approved a \$1.51 billion facilities improvement bond known as Proposition MM. As part of my tasks, I am currently overseeing the technology, climate-mechanical and electrical-technology portions of the bond, which comprise about \$300 million of the \$1.51 billion. The technology portion of this amounts to \$209 million designated to modernize technology for 111 existing elementary and 19 existing high schools and about 18 new schools, amounting to a total of about 148 schools.
3. The technology upgrades include the installation of infrastructure and electronic components for data and wireless systems, voice over Internet protocol (VoIP), multimedia systems and security systems. Our teachers and students are benefiting tremendously from the use of the new technology in classrooms. The technologies are used regularly in classrooms to present and teach language arts, mathematics and other content areas. Students also use these resources to show their work and demonstrate their thinking. The installations have had a positive impact at many of the underperforming schools.
4. Since the District wanted to ensure a straightforward E-rate process, the infrastructure portion (trenches, cabling, etc.) was not included in either of the Funding Year 2002 and Funding Year 2003 applications. The applications sought funds for only the electronic components and services part of the technology modernization.
5. As part of the contract solicitation process, the District pre-qualified vendors using the competitively bid California Multiple Award Schedules (CMAS) process. Under CMAS contracts, which are the same as, or similar to, General Services Administration ("GSA") contracts, vendors offer goods and services to state and local agencies – with corresponding prices – from an already existing competitively bid, cost compared, multiple-award contract.
6. Because the District was concerned about the vendor's ability to install the components at the best possible price and on-schedule, in a manner that would serve the District over many years, the District also used a Request for Information/Request for Proposal process. This allowed the District to include factors such as pricing, technical ability, past performance and references. After narrowing the original listing to four finalists, the District separated the projects and competed the finalists against each other for final selection.

7. To offset a portion of the technology modernization costs, and to receive the maximum leverage for the funds available from the bond, the District applied for *E-rate funding for internal connections products and services for Funding Year 2002*. The District's application for Funding Year 2002 was approved by the Universal Service Administrative Company ("USAC") (FCC Form 470 Application number 211530000417674; FCC Form 471 Application number 290737).
8. Subsequently, the District filed an application for Funding Year 2003 (FCC Form 470 Application number 211530000417674; FCC Form 471 Application number 339004) based upon the same selection process, multi-year contracts and base FCC Form 470 application for this application as for Funding Year 2002. However, by letter dated April 13, 2004, USAC denied the District's request.
9. From May 16th to May 20th 2005, the Internal Audit Division of USAC conducted a comprehensive audit of the District's Funding Year 2002 application. The audit report, dated December 2, 2005, was published after the Request for Review was filed with the Federal Communications Commission ("FCC"). The report found no improper payments and concluded that "no exceptions were noted" to the District's competitive bidding process and that the District selected the most cost-effective service providers.
10. Because the USAC found that the District complied with all FCC requirements for Funding Year 2002 and selected the most cost-effective service providers, then logically, the District's identical request for Funding Year 2003 (which used the same base FCC Form 470 and selection process) would also be consistent with applicable FCC standards and should be approved.

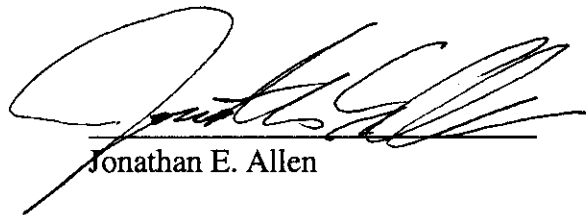

Evan Leslie


Date

Certificate of Service

I, Jonathan E. Allen, an attorney with the law firm of Rini Coran, PC, hereby certify that a copy of the foregoing "Supplement to Request for Review of the Decision of the Universal Service Administrator, or in the Alternative, Request for Waiver by the San Diego Unified School District" was sent by first-class mail this 3rd day of August, 2006, to:

Administrator
Universal Service Administrative Company
Box 125 – Correspondence Unit
80 South Jefferson Road
Whippany, New Jersey 07981



Jonathan E. Allen